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DETENTION DEVICE SYSTEMS,  
INCORPORATED

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHICAGO METALLIC CORPORATION,  
  
Plaintiff,  
  
v.  
  
DETENTION DEVICE SYSTEMS,  
INCORPORATED,  
  
Defendants.

CASE NO. 3:08-cv-03042-EMC

**ANSWER TO PLAINTIFF'S COMPLAINT  
FOR TRADEMARK INFRINGEMENT  
AND UNFAIR COMPETITION**

**REQUEST FOR JURY TRIAL**

Defendant DETENTION DEVICE SYSTEMS, INCORPORATED ("Defendant")  
responds to the Complaint for Trademark Infringement and Unfair Competition ("Complaint") of  
Plaintiff CHICAGO METALLIC CORPORATION ("Plaintiff"), as follows:

**NATURE OF THE ACTION**

1. Defendant admits that Plaintiff has filed an action alleging the stated claims for relief. Defendant denies that any of these claims are legally sustainable, and further denies the remaining allegations of paragraph 1.

**PARTIES**

2. Defendant is without sufficient information to admit or deny the allegations in paragraph 2, and therefore denies them.

1           3. Defendant admits the allegations in paragraph 3.

2                                   **JURISDICTION AND VENUE**

3           4. Defendant admits that it has engaged in business activities within this judicial  
4 district. Defendant denies the remaining allegations of paragraph 4.

5           5. Defendant denies that any of the stated claims for relief are legally sustainable.  
6 The remaining allegations of paragraph 5 are legal conclusions.

7           6. Defendant denies that any of the stated claims for relief are legally sustainable.  
8 Defendant lacks sufficient information and belief to admit or deny the allegations of paragraph 6,  
9 and therefore denies them.

10                               **INTRADISTRICT ASSIGNMENT**

11           7. Defendant denies that any of the stated claims for relief are legally sustainable.  
12 Defendant denies the remaining allegations of paragraph 7.

13                               **PLAINTIFF'S BUSINESS AND MARK**

14           8. Defendant lacks sufficient information and belief to admit or deny the allegations  
15 of paragraph 8, and therefore denies them.

16           9. Defendant lacks sufficient information and belief to admit or deny the allegations  
17 of paragraph 9, and therefore denies them.

18           10. Defendant lacks sufficient information and belief to admit or deny the allegations  
19 of paragraph 10, and therefore denies them.

20                               **DEFENDANT'S CONDUCT**

21           11. Defendant denies that it operates a business marketing visitation books under the  
22 trademark "Secure-Line", or any other trademark. Defendant admits the remaining allegations of  
23 paragraph 11.

24           12. Defendant admits that it has engaged in and continues to engage in the business of  
25 providing metal ceiling systems. Defendant denies the remaining allegations of paragraph 12.

26                               **FIRST CLAIM FOR RELIEF**

27           13. Defendant incorporates its responses to paragraph 1 through 12, above.

28           14. Defendant denies the allegations of paragraph 14.

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15. Defendant admits that it has used and continues to use "Secure-Line" in commerce. Defendant denies the remaining allegations of paragraph 15.

16. Defendant denies the allegations of paragraph 16.

17. Defendant denies the allegations of paragraph 17.

18. Defendant denies the allegations of paragraph 18.

19. Defendant denies the allegations of paragraph 19.

### **SECOND CLAIM FOR RELIEF**

20. Defendant incorporates its responses to paragraphs 1 through 19, above.

21. Defendant denies the allegations of paragraph 21.

### **THIRD CLAIM FOR RELIEF**

22. Defendant incorporates its responses to paragraphs 1 through 21, above.

23. Defendant denies the allegations of paragraph 23.

24. Defendant denies the allegations of paragraph 24.

### **FOURTH CLAIM FOR RELIEF**

25. Defendant incorporates its responses to paragraph 1 through 24, above.

26. Defendant lacks sufficient information and belief to admit or deny the allegations of paragraph 26, and therefore denies them.

27. Defendant denies the allegations of paragraph 27.

28. Defendant denies the allegations of paragraph 28.

29. Defendant denies the allegations of paragraph 29.

### **PRAYER FOR RELIEF**

Defendant denies that Plaintiff is entitled to any of the items set forth in its prayer for relief.

### **AFFIRMATIVE DEFENSES**

AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, this answering Defendant alleges that each of Plaintiff's claims fails to state a claim upon which relief may be granted.

1 AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT  
2 ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED  
3 THEREIN, this answering Defendant alleges that it first adopted "Secure-Line" to identify its  
4 products without knowledge of Plaintiff's prior use thereof, if any. The date of Defendant's  
5 adoption of the mark is prior to the registration and/or use of Plaintiff's trademark, as alleged in  
6 the complaint. Furthermore, Defendant has used "Secure-Line" continuously since the date of  
7 first adoption, as alleged above.

8 AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT  
9 ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED  
10 THEREIN, this answering Defendant alleges that its use of "Secure-Line" is a use other than as  
11 trade or service mark in that it is descriptive of, and is used by Defendant fairly and in good faith  
12 only to describe its products to its users.

13 AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT  
14 ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED  
15 THEREIN, this answering Defendant alleges that Plaintiff is using its trademark to violate the  
16 antitrust laws of the United States.

17 AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT  
18 ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED  
19 THEREIN, this answering Defendant alleges that its conduct was not the cause in fact, or the  
20 proximate cause, of any of the losses alleged by Plaintiff.

21 AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT  
22 ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED  
23 THEREIN, this answering Defendant alleges that Plaintiff's alleged trademark is descriptive,  
24 without having obtained secondary meaning, not a trademark from its inception, and incapable of  
25 legal protection under the law.

26 AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
27 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
28 CONTAINED THEREIN, this answering Defendant alleges that the use of "Secure-Line"

1 constitutes fair use of the alleged mark.

2 AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
3 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
4 CONTAINED THEREIN, this answering Defendant alleges that there is no actual confusion nor  
5 any likelihood of confusion between the alleged trademark and "Secure-Line."

6 AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT  
7 ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED  
8 THEREIN, this answering Defendant alleges that Plaintiff's alleged trademark is weak and/or  
9 unprotectable and not infringed, and therefore, the scope of protection for said alleged mark does  
10 not extend to Defendant's use of "Secure-Line." Defendant contends that there are numerous  
11 third party uses of similar marks.

12 AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT  
13 ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED  
14 THEREIN, this answering Defendant alleges that Plaintiff has abandoned its alleged rights in the  
15 alleged trademark by acts which have caused the mark to lose its significance.

16 AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
17 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
18 CONTAINED THEREIN, this answering Defendant alleges that Plaintiff's alleged trademark is  
19 not inherently distinctive, and has not become distinctive in that purchasers do not associate the  
20 name, mark or symbol with Plaintiff alone.

21 AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
22 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
23 CONTAINED THEREIN, this answering Defendant alleges that there is no possibility of  
24 confusion as to the source of goods, and there is no reasonable implication of endorsement of  
25 goods.

26 AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
27 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
28 CONTAINED THEREIN, this answering Defendant alleges that Plaintiff is attempting to unfairly



1 compete in violation of Federal and State unfair competition laws. Plaintiff's unfair competition  
2 claims are based, in part, on inequitable conduct, including Plaintiff's attempt to force Defendant  
3 out of business and injure Defendant's reputation.

4 AS A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
5 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
6 CONTAINED THEREIN, this answering Defendant alleges that Plaintiff has suffered no  
7 damages by virtue of any of Defendant's alleged acts.

8 AS A FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
9 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
10 CONTAINED THEREIN, this answering Defendant alleges that at all times it acted in good faith  
11 and with good cause, and that Defendant's conduct was within the reasonable expectations of the  
12 parties and was reasonably related to Defendant's legitimate business interests upon the basis of  
13 reasonable factors.

14 AS A SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
15 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
16 CONTAINED THEREIN, this answering Defendant alleges that the damages claimed by Plaintiff  
17 could have been mitigated by due diligence on its part or by one acting under similar  
18 circumstances, and that Plaintiff's failure to mitigate is a bar to its recovery under the complaint.

19 AS A SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
20 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
21 CONTAINED THEREIN, this answering Defendant alleges that the complaint and each of its  
22 purported claims for relief are barred by the doctrine of estoppel.

23 AS AN EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
24 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
25 CONTAINED THEREIN, this answering Defendant alleges that the complaint and each of its  
26 purported claims for relief are barred by the doctrine of laches.

27 AS A NINETEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
28 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION

1 CONTAINED THEREIN, this answering Defendant alleges that the complaint and each of its  
2 purported claims for relief are barred by the doctrine of waiver.

3 AS A TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
4 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
5 CONTAINED THEREIN, this answering Defendant alleges that the complaint and each of its  
6 purported claims for relief are barred by the doctrine of unclean hands.

7 AS A TWENTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
8 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
9 CONTAINED THEREIN, this answering Defendant alleges that the complaint and each of its  
10 purported claims for relief are barred because Plaintiff's trademark is invalid.

11 AS A TWENTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
12 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
13 CONTAINED THEREIN, this answering Defendant alleges that some or all of Plaintiff's claims  
14 are barred by the privilege of fair competition.

15 AS A TWENTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
16 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
17 CONTAINED THEREIN, this answering Defendant alleges that each cause of action set forth in  
18 the Complaint is barred by the applicable statutes of limitation, including but not limited to,  
19 California Business and Professions Code section 17208, and California Code of Civil Procedure  
20 sections 338, 340 and 343.

21 AS A TWENTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
22 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
23 CONTAINED THEREIN, this answering Defendant alleges that the complaint and each  
24 purported claim for relief is barred by the doctrine of fair use.

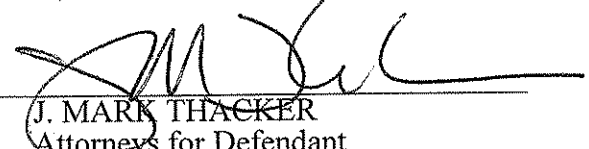
25 This answering Defendant alleges that the complaint does not describe the alleged actions  
26 with sufficient particularity to permit it to ascertain what other defenses may exist. Defendant  
27 therefore reserves the right to assert all defenses that may pertain to the complaint and each claim  
28

1 for relief alleged therein.

2 Dated: July 29, 2008

ROPERS, MAJESKI, KOHN & BENTLEY

3  
4 By:

  
J. MARK THACKER  
Attorneys for Defendant  
DETENTION DEVICE SYSTEMS,  
INCORPORATED

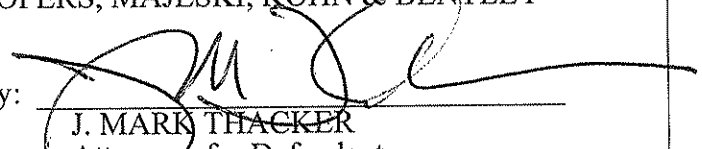
5  
6  
7 **DEMAND FOR JURY TRIAL**

8 Defendant DETENTION DEVICE SYSTEMS, INCORPORATED, hereby requests a jury  
9 trial on all issues triable to a jury.

10 Dated: July 29, 2008

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11  
12 By:

  
J. MARK THACKER  
Attorneys for Defendant  
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